

THE WILDERNESS SOCIETY ET AL.

IBLA 83-61

Decided June 1, 1984

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting the protest of the exclusion of certain lands from further wilderness review. 8500 (931).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

Organic Act Directive 78-61, Change 3, at page 3, provides that BLM may in certain instances properly adjust the boundary of an inventory unit based on the outstanding opportunity criterion.

2. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

In evaluating a unit's opportunity for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

3. Federal Land Policy and Management Act of 1976: Wilderness --
Wilderness Act

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal, and such judgments may not be overcome by expressions of simple disagreement.

APPEARANCES: Bill Cunningham, Helena, Montana, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

In The Wilderness Society, 66 IBLA 287 (1982), the Board set aside in part a decision by the Montana State Director, Bureau of Land Management (BLM), denying in part a protest by The Wilderness Society et al. against the exclusion of certain lands from further wilderness review. In our decision, we remanded for BLM's reconsideration the files of four inventory units with specific instructions to determine certain facts. Subsequently, BLM made factual determinations for each unit consistent with its initial decision to exclude portions of these units from further wilderness review. A decision setting forth these determinations was issued to appellants by letter dated November 12, 1982. This appeal followed. To aid in an understanding of this case, the present decision is divided into sections corresponding to the units presently on appeal.

Stafford (MT-006-250)

In BLM's announcement of final intensive inventory decisions, 45 FR 75589 (Nov. 14, 1980), the State Director designated the western 4,700 acres of the Stafford inventory unit as a wilderness study area (WSA). The remaining 2,477 acres to the east were found to lack outstanding opportunities for either solitude or a primitive and unconfined type of recreation and were, accordingly, dropped from further wilderness review. BLM's narrative summary accompanying this decision stated that a vehicle trail divided the unit into these two parts. We noted at page 292 of our decision that if the trail formed a proper boundary dividing the unit, neither of the two parcels was of sufficient size to qualify as a WSA under section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). ^{1/}

A remand to BLM was deemed to be necessary because the inventory file contained inconsistent reports as to the severity of the impact of the vehicle trail. In its narrative summary of December 1979, BLM concluded on two occasions that the vehicle trail through sec. 28, T. 23 N., R. 18 E., Principal meridian, was not substantially noticeable. A later narrative summary appearing in November 1980 as part of BLM's final inventory decisions for the Miles City and Lewistown districts, seemingly contradicted this earlier narrative by placing a WSA boundary along this vehicle trail.

Our remand to BLM for an explanation of this disparity prompted the following response in the decision of November 12, 1982:

^{1/} The State Director's review of these lands was taken pursuant to section 603(a) of the FLPMA, 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1982). Following review of an area or island, the Secretary shall from time to time report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

The IBLA Decision (81-606) remanding the Stafford Unit for clarification was based on two differing narrative reports. These reports (December 1979 and November 1980) discuss the condition of the vehicle way that divides the unit. These reports were prepared by different inventory teams during two very atypical seasonal weather situations. In 1979, wet growing conditions resulted in heavy vegetation cover and excellent vegetative screening of surface disturbances. Related to these moisture conditions was the fact that very little vehicle use occurred on this vehicle way during the 1979 season. The result was that the inventory team found the vehicle way to be substantially unnoticeable.

As work progressed on the final inventory decision the following year, a completely different team visited the area to finish the November 1980 narrative summary. Weather conditions were hot and dry, leading to a shorter growing season. Ground disturbance from past improvement work on the vehicle way ("definite cut banks") was substantially noticeable.

Historically, the weather in this area is dry and hot 8 out of 10 years. Portrayed in this context, the excellent growing season observed in 1979 is abnormal for the area. The substantially noticeable impact of the vehicle way observed during the 1980 season would be evident a majority of the time. OAD [Organic Act Directive] 78-61, Change 2, page 5 states that a boundary can properly be established along a substantially noticeable impact.

The vehicle way was identified as a boundary in the 1980 inventory decision and is located on a ridgeline which forms a natural physiographic division line between the western segment that has outstanding solitude opportunities and the eastern segment which does not.

In conclusion, this vehicle way does form a proper boundary dividing the unit into two parcels - western segment (4,700 acres) and eastern segment (2,477 acres). Because each of the two parcels is less than 5,000 acres in size, neither of them is of sufficient size to qualify as a WSA under Section 603(a).

State Director's Decision at 1-2.

We find the State Director's response to be a plausible explanation for the inconsistent reports in the inventory file regarding the vehicle trail at issue. The State Director's preference for the 1980 reports by his staff, rather than the 1979 reports, is disputed by appellants. Appellants take exception, for example, with the State Director's characterization of the 1979 growing season as "excellent" and "abnormal," preferring instead to characterize it as "above average." The State Director found hot and dry weather conditions like those in 1980 occurred 8 out of 10 years. The vehicle way forming the disputed boundary would, therefore, be evident a majority of the time, he concluded. In contrast, appellants describe the 1980 growing

season as "abnormally poor" as a result of "[a] lack of snow that warm winter, no spring runoff, no early rains, and the [Mount St. Helens] volcano and resulting winds (Statement of Jerry Berner at 2 (attachment to statement of reasons)). No precipitation figures or other climatological data are cited by appellants in support of their conclusion that BLM's 1980 reports presented an atypical picture of the area.

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact. Idaho Cattlemen's Association, 63 IBLA 30 (1982). On the basis of appellants' statement of reasons, we do not find that they have met this burden. Moreover, appellants' statements as to growing seasons do not specifically address the vegetation in or around the vehicle trail at issue. Ultimately, it is this localized area that is the focus of the present appeal.

Appellants contend that BLM's adjustment of the Stafford inventory unit boundaries along the vehicle trail was incorrect. Boundary adjustments are not appropriate, appellants argue, for individual, minor imprints which are determined to be substantially unnoticeable. OAD 78-61, Change 2, page 5, is cited as authority for this proposition.

Although the policy set forth by appellants is accurately stated, it is inapposite to the facts at hand. The State Director found the vehicle trail at issue to be substantially noticeable. A single, substantially noticeable impact is sufficient to justify a boundary adjustment. Appellants offer no persuasive argument that the State Director incorrectly found this trail to be substantially noticeable. Their broadside assertion that local wilderness opponents purposely used this and other vehicle ways with the objective of disqualifying land from wilderness study is unsupported by specifics. Neither the time, location, nor means of this activity is set forth.

We find that the State Director's conclusion that the vehicle trail dividing the Stafford unit into two parts is a substantially noticeable impact is supported by the record. As noted in our decision at page 292, neither of the two parts of the unit is of sufficient size by itself to qualify as a WSA under section 603(a). Tri-County Cattlemen's Association, 60 IBLA 305 (1981). Although a WSA designation is impossible under section 603(a), 43 U.S.C. §§ 1712 and 1732 (1976) provide authority for BLM to manage the instant lands in a manner consistent with wilderness objectives. Don Coops, 61 IBLA 300 (1982). Contrary to appellants' assertion, the record is silent as to the State Director's intentions for further study of these lands.

The State Director's decision with respect to the Stafford inventory unit is affirmed.
Ervin Ridge (MT--066-253)

During the intensive inventory of the Ervin Ridge unit, BLM divided the unit into three parts: A western part of approximately 9,100 acres, 2/ a

2/ The State Director's decision of Nov. 12, 1982, noted that this western segment contains 10,800 acres, contrary to our decision at 66 IBLA 293. Our figure of 9,100 acres is calculated from BLM's Nov. 14, 1980, announcement of intensive inventory decisions. 45 FR 75589 (Nov. 14, 1980).

central WSA of 12,000 acres, and an eastern part of 1,400 acres. Both the western and eastern parts were dropped from further wilderness review in the State Director's announcement of November 1980. Because of the location of State sections on the east and west side of the central WSA, there existed narrow corridors of public land flanking the WSA on these sides. BLM divided the inventory unit by establishing boundaries at these parts along section lines.

BLM's boundary adjustment separating the central WSA from the western acreage was drawn on the section line between secs. 1 and 2, T. 23 N., R. 19 E. At this location, a narrow corridor of public land, approximately one-fourth-mile wide, connects the central WSA to the western portion of the unit. Because the relevant area between secs. 1 and 2 appeared to be wholly without impact, we assumed that BLM made its boundary adjustment based upon the outstanding opportunity criterion.

[1] OAD 78-61, Change 3, at page 3, authorizes BLM to adjust unit boundaries based on the outstanding opportunity criterion in three instances:

- (a) When a narrow finger of roadless land extends outside the bulk of the unit;
- (b) When land without wilderness characteristics penetrates the unit in such a manner as to create narrow fingers of the unit (e.g., cherrystem roads closely paralleling each other);
- (c) When extensive inholdings occur and create a very congested and narrow boundary area. These situations are expected to rarely occur, and boundary adjustments in such cases may only be made with State Director approval. Very good judgment will be required in locating boundaries under such conditions so as to exclude only the minimum appropriate land. Such boundary adjustments are not permissible if the land in question possesses an outstanding opportunity for primitive and unconfined recreation. [Emphasis in original.]

From the narrative summary published in November 1980, it appeared that BLM sought to justify its boundary adjustment on the basis that land without wilderness characteristics penetrated the western unit in such a manner as to create narrow fingers of the unit and deprive this area of outstanding opportunities for solitude. The narrative summary stated that opportunities for solitude were not outstanding in this parcel, because many roads following ridge tops penetrated the unit and created a situation where an individual or group seeking solitude must seek out a secluded spot in the drainage bottoms or along the river. Upon careful study of BLM's maps showing impacts within the western portion of the Ervin Ridge unit and upon careful examination of worksheet A listing the ways and roads in this area, we identified four roads whose impacts penetrated the unit. We found it difficult, however, to discern whether other impacts shown on the maps were sufficiently severe as to create land without wilderness characteristics. Comments appearing on worksheet A were inconclusive. We remanded, therefore, with instructions that if BLM sought to justify its boundary adjustment on the basis that lands without wilderness characteristics penetrated the unit, it should state this position clearly and identify those intrusions that created narrow fingers of the unit.

In response to our remand, the State Director wrote:

The western portion of Ervin Ridge Unit containing approximately 10,800 acres was dropped from further wilderness consideration in the Final Decision: Montana Wilderness Inventory of November 1980. The reasons enumerated in the Wilderness Characteristics Narrative Summary for dropping the western segment included both a lack of outstanding opportunity for solitude and primitive recreation as well as areas that did not appear natural. The justification in the very brief Final Decision Analysis completed in conjunction with the Wilderness Characteristics Narrative Summary as well as the response to your protest in March 1981 were incomplete, stating only that gas development and range developments had impacted the apparent naturalness of the area.

It is clear, however, from reading the Wilderness Characteristics Narrative Summary prepared in conjunction with the Final Decision Analysis that the lands in the western segment did not contain either outstanding opportunities for solitude or primitive recreation. In referring to the western segment, we stated

Opportunities for solitude or primitive and unconfined types of recreation are not outstanding within this parcel. Because of the many roads that follow ridgetops, land without wilderness characteristics penetrates the unit and creates a situation where an individual or group would have to seek out a secluded spot in the drainage bottoms or along the river and stay there

Our language was incorrect because these ridgetop vehicle ways did not, in fact, meet the BLM road definition, but did create noticeable impacts.

Some misunderstanding occurred because wet weather conditions characterized the early 1979 growing season and resulted in above average vegetation during the first field inventory of Ervin Ridge. The inventory team either missed or failed to note on the Vehicular Way and Road Inventory Data Worksheet A, three ridgetop vehicle ways which are present in the appealed area. The next year, 1980, was more average in terms of vegetative growth and further inventory identified the three previously uninventoried vehicle ways which were added to the working maps in the Ervin Ridge file and were included in preparing the Wilderness Characteristics Narrative Summary, but were never added to Worksheet A.

The three ridgetop vehicle ways, although not identified in the original Worksheet A, are within the appealed area. The first in T. 23 N., R. 19 E., Sections 7, 8, and 9 follows a ridge for 2 miles. Another in Section 4 follows a parallel ridge for 1/2 mile and a third in Section 5 follows a ridge for 1/4 mile.

Although not roads by the BLM Inventory Handbook definition, these vehicle ways create a substantially noticeable impact on the ridgelines on which they are located.

In addition there are three other vehicle ways that were identified in the original field inventory. They are numbered VII, IX, and X respectively in Worksheet A. Way VII is located in T. 24 N., R. 19 E., Sections 32, 33, and 34 and follows Red Rock Ridge for 2.25 miles. Way IX is in Sections 26, 27, and 35 of the same township and range and follows Barnard Ridge for 1.25 miles. Way X also follows Barnard Ridge for 1 mile passing through Sections 26, 35, and 36.

All six of the above vehicle ways appear to receive use and exert the same adverse influence on wilderness values as the vehicle way which you have used as the western boundary of the appeal area. Your boundary line is identified as vehicle way V in Worksheet A.

Under OAD 78-61, Change 3 on page 3, paragraph b, the six closely paralleling ridge lines, each containing a substantially noticeable vehicle way, are without wilderness characteristics and do penetrate the inventory unit in such a way as to create narrow fingers of the unit. As such, the appealed area does not meet the outstanding [opportunities] criteria required for wilderness study.

States Director's Decision at 2-3.

Appellants oppose the State Director's conclusion, contending that the decision is vague and uncertain. Appellants indicate difficulty in determining the size of the narrow fingers described by BLM and criticize its use of a section line as a boundary of the unit. Nothing in the OAD, appellants contend, indicates that the first basis of boundary adjustment should be a legal subdivision.

The case file transmitted to the Board with the State Director's response of November 12, 1982, contains a map of the Ervin Ridge unit with an overlay showing the six routes identified in the response as substantially noticeable. Although it is difficult to generalize, the six routes run roughly parallel to one another and (except for vehicle ways IX and X) appear to be approximately 1 mile apart. Because of this fact and because of the generally narrow shape of the unit boundaries, a person standing anywhere in the unit is less than 1 mile from either a unit boundary or a substantially noticeable impact.

Appellants have not offered any evidence to rebut the State Director's finding that the six routes identified in his response of November 12, 1982, are substantially noticeable and, thus, lack wilderness characteristics. We hold that the State Director's boundary adjustment based on the outstanding opportunity criterion was consistent with OAD 78-61, Change 3, at page 3. Because such adjustments by definition are not made along roads or substantially noticeable imprints of man, BLM's adjustment of the unit boundary to conform to a portion of the section line common to secs. 1 and 2, T. 23 N.,

R. 19 E., was not improper. Indeed, the OAD acknowledges that a legal description, such as a section line, may serve as a unit boundary (OAD 78-61, Change 2, at 5).

The State Director's decision of November 12, 1982, with respect to the Ervin Ridge unit is affirmed.

Bullwhacker (MT-066-255)

The Bullwhacker inventory unit contains 40,851 acres of land that BLM dropped in its entirety from further wilderness review in its November 1980 final inventory decision. The narrative summary accompanying this decision based rejection on the lack of naturalness in the unit caused by some "45 vehicle ways, 57 reservoirs, gas lines, and 45 live or dry gas wells." The summary also acknowledged that the area had a "dissected and rugged appearance" because of the numerous coulees that fed into Bullwhacker Creek within the unit boundaries. Forty percent of the area was described by BLM as timbered in scattered concentrations. These tall trees and the unit's "jagged topography" were acknowledged to provide an outstanding opportunity for solitude.

Appellants protested the dropping of this unit from further wilderness review, focusing on the lack of naturalness identified by BLM. New boundaries were proposed for the unit by appellants, eliminating some of its intrusions and reducing the area of the unit to 10,000 acres. Appellants' protest acknowledged BLM's finding that an outstanding opportunity for solitude existed within the original Bullwhacker boundaries.

BLM's brief protest response held that appellants' 10,000-acre parcel would not receive further wilderness review because outstanding opportunities for solitude or a primitive and unconfined type of recreation did not exist within the open drainages. BLM also stated that the 10,000-acre protest parcel encompassed portions of the Big Bullwhacker and Little Bullwhacker Creeks.

Because BLM's protest response appeared to contradict its narrative summary, we remanded the Bullwhacker case files to BLM to explain why those factors producing outstanding opportunities for solitude in the unit as a whole did not produce similar opportunities in appellants' proposed 10,000-acre parcel.

The State Director's November 12, 1982, decision stated in part:

It is my feeling that the appealed area does not contain an outstanding opportunity for solitude. Solitude is obviously present in the area at most times because of the isolated nature of the entire Missouri Breaks area. The point that was being made in the protest response is: what would be the quality of this solitude opportunity for a wilderness user in the wide open and lightly vegetated drainages that characterize the appealed area if another party was present, be it a rancher maintaining one of the fences or reservoirs or another recreational user? The opportunity to

escape the influence is possible but not always easy in the appealed area. The wide drainages which characterize the appealed area do differ from the remainder of the original Bullwhacker inventory unit where there is considerably more vegetative screening available and more diverse landform characterized by a number of parallel drainages which feed into Bullwhacker Creek.

Based on an aerial review of the area on September 29, 1982, it was confirmed that there are patches of timber, primarily in the north part of the appealed area. These are isolated pockets of trees and, while adding to the quality of solitude and opportunity to escape influences of others in the area, solitude can be gained only through conscious effort of a user.

State Director's Decision at 4-5.

Appellants take exception to this finding, contending that the State Director has given an erroneous physical description of their 10,000-acre parcel. High north slopes with numerous heavy patches of juniper and timber are present in the southern portion of this parcel, appellants state. They also charge error in the State Director's statement that solitude can be gained "only through conscious effort of a user," arguing that such a rationale cannot be found in any policy or directive defining solitude. In appellants' view, outstanding opportunities for solitude are present at a ceremonial site used by the Blackfeet and at a 50- to 60-foot spire at the head of Little Bullwhacker Creek. Outstanding opportunities for recreation are available, appellants maintain, to visitors seeking to view many of the geographic features described by Lewis and Clark over 175 years ago.

[2] The Wilderness Inventory Handbook (WIH) offers guidance to BLM on the issue of solitude. At page 13, BLM is urged to "consider factors which influence solitude only as they affect a person's opportunity to avoid the sight, sounds, and evidence of other people in the inventory unit." A listing of these factors is provided: "Factors or elements influencing solitude may include size, natural screening, and ability of the user to find a secluded spot. It is the combination of these and similar elements upon which an overall solitude determination will be made." *Id.* We perceive no error in the State Director's application of the solitude standards set forth in the WIH. The ability of a user, whether through conscious effort or not, to gain solitude is clearly one factor to be considered in determining whether outstanding opportunities for solitude exist. The State Director's reference to the wide drainages within appellants' 10,000-acre parcel and to the relative scarcity of vegetative screening and of diverse land forms indicates that a combination of factors was considered in reaching his decision.

Appellants' listing of sites that in their opinion contain outstanding opportunities for solitude or primitive and unconfined recreation does not establish error in the State Director's response. As we have pointed out on numerous occasions, the question whether a unit possesses outstanding opportunities for solitude or recreation is a highly subjective one. ASARCO, Inc., 64 IBLA 50 (1982). Because of the expertise that BLM has gained from its firsthand knowledge of the lands and from the comments of interested persons,

we believe that BLM's judgment is entitled to considerable deference. By this statement, we do not mean to imply that BLM's determination is immune from review. To the contrary, BLM's documentation for its judgment has been carefully studied, as has the documentation of appellant. Appellants, however, have a particularly heavy burden to support a reversal of BLM's subjective conclusions. We cannot say that they have met this burden on the issue of the unit's outstanding opportunities for solitude or a primitive and unconfined type of recreation. See Conoco, Inc., 61 IBLA 23 (1981).

The State Director's decision of November 12, 1982, with respect to the Bullwhacker unit is affirmed.

Cow Creek (MT 066-256)

In BLM's November 14, 1980, announcement of intensive inventory decisions, 36,000 acres of the Cow Creek inventory unit were designated a WSA and 34,913 acres were dropped from further review. Though appellants' protest alleged several errors by BLM, their statement of reasons was limited to BLM's decision to drop an area of approximately 8,000 acres located in the southwest part of the unit. Appellants stated on appeal that the northern boundary of this area should have been a route, which BLM identified as a road, traversing secs. 10 through 14, T. 24 N., R. 21 E., Principal meridian. This 8,000-acre area is part of a larger 9,500-acre parcel which BLM addressed in its protest response. The focus of appellants' original appeal was BLM's adjustment of unit boundaries and its finding that outstanding opportunities for solitude or a primitive and unconfined type of recreation were lacking in this parcel.

The aforementioned parcel is almost entirely isolated from the WSA by private lands and a vehicle route. By drawing a unit boundary along the common section line between secs. 31, 32, T. 24 N., R. 22 E., and secs. 5, 6, T. 23 N., R. 22 E., BLM made this isolation complete. Appellants charged error in this boundary adjustment, pointing out that no impacts existed along this revised boundary. If this adjustment had not been made, the corridor connecting the WSA to the parcel at issue would measure approximately 600 yards at its narrowest part.

We remanded the Cow Creek case files to BLM because of our inability to identify two roads that BLM claimed penetrated the 9,500-acre parcel and created lands without wilderness characteristics therein.

The State Director responded in his decision of November 12, 1982, in this manner:

The identification of vehicle ways IX and X as roads in the Final Decision: Montana Wilderness Inventory as well as our protest response of March 1981, were in error. The error was the result of the fact that there is no documented record of maintenance of the two ways. The third way, identified as XI in the Vehicular Way and Road Inventory Data Worksheet A, actually forks off of vehicle way X and was never identified as a road. Vehicle way XI has eroded and is no longer in use. As such it is not a substantially noticeable impact and did not play a major role in the decision not to study the area for wilderness suitability.

Even though there is no actual documentation of recent maintenance of either vehicle ways IX or X, both are obviously constructed showing deep cuts 8 to 10 feet high. Both routes are presently open throughout their length and appear to be used regularly. Both are apparent manmade impacts. Vehicle way X, as identified on Worksheet A, traverses through Sections 22, 23, 24, and 25 of T. 24 N., R. 21 E., joining with vehicle way XI in the NW corner of Section 30 of T. 24 N., R. 22 E. The file map shows and it was verified by recent field review that vehicle way X then continues through Section 30 and most of Section 31 before terminating on an abrupt ridge overlooking the Missouri River. The major construction on this vehicle way has occurred in Sections 22, 23, 24, and 25. While there is some erosion on the deep cuts, the way is not in disrepair and has been used regularly with recent tire tracks and compressed vegetation evident along its entire length.

The same is true of vehicle way IX. The way traverses across Sections 10, 11, 12, 13, and 14 of T. 24 N., R. 21 E. connecting with the road in Section 36 of T. 25 N., R. 21 E. This way has a number of deep cuts and is open throughout its entire length. The way is an obvious sign of man and creates a substantial area without wilderness characteristics.

The BLM stands on our original decision that two vehicle ways (X and XI) [3/] that penetrate the 9,500-acre parcel are substantially noticeable imprints of man and do penetrate the unit creating lands without wilderness characteristics.

It is clearly documented in both the Final Decision of November 1980, and the protest response of March 1981, that BLM did not feel the segment in question contained outstanding opportunities for solitude or primitive and unconfined recreation.

OAD 78-61, Change 3 at page 3b allows BLM to make a boundary adjustment when substantially noticeable impacts penetrate the area and create narrow fingers of the unit.

State Director's decision at 5-6.

In response to the State Director, appellants point out that vehicle way IX is the northern boundary of the 8,000-acre tract that is the focus of their appeal. As such, they maintain, it is outside of the area that is the subject of their concern. Appellants question how such a way can be considered a substantially noticeable impact penetrating the unit when, in fact, it is a boundary of the area on appeal.

Further error is charged in the failure of the State Director to consider yet another change to the northern boundary of the unit, a change that would reduce the area on appeal to 4,400 acres. This new boundary appears to coincide with vehicle route X and then follows the section line common to

3/ We believe that a typographical error is present in the listing of those vehicle ways that are substantially noticeable imprints of man. Vehicle ways IX and X were obviously intended by the State Director here.

sec. 24, T. 24 N., R. 21 E., and sec. 19, T. 24 N., R. 22 E. Vehicle route X, appellants claim, shows evidence of construction up to its midway point in sec. 25, T. 24 N., R. 21 E., but beyond such point remains as a vehicle way of low impact with good potential for returning to a natural condition.

Appellants are correct in stating that vehicle route IX forms the northern boundary of their 8,000-acre appeal area and, as such, does not penetrate this area. Vehicle route IX does penetrate BLM's 9,500-acre parcel and the State Director was very likely referring to this fact in holding that boundary adjustments were justified by such penetration. Focusing on appellants' 8,000-acre appeal area, we find that vehicle route X is the only route acknowledged by the State Director to be substantially noticeable that penetrates this 8,000-acre area. Vehicle route X traverses this area in such a way that any person in the area is always within 1 mile of the route or the boundary of the area.

Appellants and BLM agree that construction of vehicle route X appears to be limited to that segment west of sec. 25, T. 24 N., R. 21 E. They disagree, however, on the question whether the impact of vehicle route X is substantially noticeable. In support of their view, appellants contend that the route has a good potential for returning to its natural condition.

[3] The question whether or not a vehicle route is substantially noticeable is highly subjective. In Richard J. Leaumont, 54 IBLA 242, 88 I.D. 440 (1981), this Board stated at page 245, 88 I.D. at 491:

These [wilderness] evaluations are necessarily subjective and judgmental. BLM's efforts are guided by established procedures and criteria, and are conducted by teams of experienced personnel who are often specialists in their respective areas of inquiry. Their findings are subjected to higher-level review before they are approved and adopted. Considerable deference must be accorded the conclusions reached by such a process, notwithstanding that such conclusions might reach a result over which reasonable men could differ.

The deference granted to BLM on a highly subjective issue, such as whether vehicle route X is a substantially noticeable impact, places on appellants a particularly heavy burden to support a reversal. More than simple disagreement is necessary to reverse a finding of BLM. In the present case, appellants have failed to offer any compelling reasons for disturbing BLM's finding in this regard.

As set forth in our discussion of the Ervin Ridge unit, BLM may adjust the boundaries of a unit according to the outstanding opportunity criteria when land without wilderness characteristics penetrates the unit in such a manner as to create narrow fingers of the unit. Vehicle route X is such a penetration of appellants' 8,000-acre appeal area. BLM's boundary adjustment to coincide with the southern boundary of secs. 31 and 32, T. 24 N., R. 22 E., is within the terms of OAD 78-61, Change 3, at page 3.

BLM made such a boundary adjustment because it found that the 8,000-acre appeal area lacked outstanding opportunities for solitude or a primitive and unconfined type of recreation. Appellants take exception with this conclusion contending instead that outstanding opportunities for solitude are present in this area. As in our discussion of the Bullwhacker unit, appellants' disagreement with a subjective conclusion of BLM does not by itself compel a reversal of BLM's finding. Appellants have failed to offer compelling reasons for disturbing BLM's conclusions with respect to the 8,000-acre appeal area.

The boundaries proposed by appellants for their 4,400-acre addition to the Cow Creek WSA fail to meet the requirements set forth in the OAD for establishing unit boundaries. As appellants are aware, a boundary coinciding with a legal subdivision, such as the west section line of sec. 19, T. 24 N., R. 21 E., is highly unusual. Such a boundary would be proper if it approximated "the physical edge of the imprint of man" (OAD 78-61, Change 2, at 5). Appellants, however, do not acknowledge any such impacts at this site. A boundary adjustment along a legal subdivision might also be proper if drawn by BLM to exclude an area without outstanding opportunities for either solitude or a primitive and unconfined type of recreation (OAD 78-61, Change 3, at 3). Such an adjustment would, of course, be inconsistent with appellants' efforts to include this acreage in the Cow Creek WSA. Our examination of the pleadings and OAD reveal no justification for the boundaries of appellants' proposed 4,400-acre parcel.

If appellants are contending that this 4,400-acre parcel can stand by itself as a WSA, we point out that its size alone would preclude it from being designated a WSA under section 603(a) of FLPMA. Lands of less than 5,000 acres may not be designated a WSA under section 603(a) of FLPMA, although alternate provisions of FLPMA may authorize BLM's management of such an area in a manner consistent with wilderness objectives. Don Coops, supra at 306.

The State Director's decision of November 12, 1982, with respect to the Cow Creek unit is affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Director is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

